923625-1933 OLIZBIOS FH. KING COUNTY RECORDS OLD

13. 13.

ORDINANCE NO. 3108

AN ORDINANCE of the City of Kent, Washington, granting unto TCI Cablevision of Washington, Inc., the right, privilege, authority and franchise for fifteen (15) years to construct, maintain and operate a cable television system for the distribution of television and other electronic signals within all City right-of-ways.

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ORDINANCE NO. 3/08

AN ORDINANCE of the City of Kent, Washington, granting unto TCI Cablevision of Washington, Inc., the right, privilege, authority and franchise for fifteen (15) years to construct, maintain and operate a cable television system for the distribution of television and other electronic signals within all City right-of-ways.

THE CITY COUNCIL OF THE CITY OF KENT DOES HEREBY ORDAIN AS FOLLOWS:

Section 1: Purpose.

This Franchise shall constitute an agreement between the City of Kent (hereinafter the "City") and TCI Cablevision of Washington, Inc. (hereinafter the "Operator"). The Operator promises to construct, maintain, and operate a cable television system for the distribution of television and other electronic signals pursuant to the terms of this Franchise and the City's Cable Communications Ordinance No. 3107. The City agrees to grant the Operator all necessary rights and privileges to use public rights of way necessary for a cable television system. This agreement shall, as of its effective date, supersede and replace all existing franchises previously granted by the City of Kent to the Operator or any of its predecessors, subsidiaries or affiliated companies.

section 2: Length of Pranchise.

The length of this Franchise shall be for a term of fifteen (15) years commencing on the effective date of this ordinance.

Section 3: Service Area.

The Operator's service area shall be the entire incorporated area of the City of Kent, in its present incorporated form or in any later reorganized, consolidated, enlarged, or re-incorporated form.

Section 4: Franchise Fee.

The Operator shall pay to the City quarterly, on or before the thirtieth (30th) day of each January, April, July and October, a sum equal to five percent (5%) or greater of gross revenues commencing upon the effective date of this ordinance. Revenues that are derived as a portion of a national or regional service shall be computed on a per subscriber basis if such determination cannot be achieved by other means.

The City may raise the franchise fee, if so permitted by Federal and State law. Prior to implementation of any increase in franchise fees the Operator may request, and will be granted, a public hearing by the City Council to discuss the benefits of said increase to the citizens of Kent. Upon a finding of the City Council that such increase is reasonably required to meet community needs, taking into consideration the cost of providing such increase, the City Council may require the implementation of such increase in accord with the provisions of this agreement.

(a) <u>Late Payment</u>. Any quarterly franchise fee not paid by the Operator within thirty (30) days of the end of a quarter shall bear interest at the rate of twelve percent (12%) per

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annum or whatever maximum amount is allowed under State law, whichever is greater, from the due date until paid.

- (b) Financial Reports. Each franchise fee payment shall be accompanied by a financial report on a form provided by the City showing the basis for the Operator's computation and separately indicating revenues received by the Operator within the City from basic service, pay TV service, other applicable sources of revenue, and such other information directly related to confirming the amount of the Operator's gross revenues as may be reasonably required by the City.
- Audit by City. The City shall have the right, upon (C) reasonable notice or no less than two working days, to inspect the books and records of the Operator during normal business hours, for the purpose of ascertaining the actual gross revenues collected by the Operator. In the event that such audit discloses a discrepancy of more than ten percent (10%) between the financial report submitted by the Operator with a quarterly payment and the actual gross revenues collected by the Operator, the Operator agrees to pay to the City the costs In the event that such audit results in a of such audit. determination that additional franchise fees are due the City, the Operator further agrees to pay interest as required for late payment on such additional franchise fees computed from the date on which such additional franchise fees were due and payable.
 - (d) <u>Non-waiver</u>. Acceptance of any franchise fee payment by the City shall not be construed as an agreement by the City that the franchise fee paid is in fact the correct amount, nor shall acceptance of payment by the City be construed as a release or waiver of any claim the City may have for further or additional sums payable under the provisions of this Ordinance.

(e) <u>Taxes</u>. Nothing in this section shall limit the Operator's obligation to pay applicable local, State, or Federal taxes.

Bection 5: Future Provisions.

The City and the Operator acknowledge that the former should be provided with a cable system that has the same general capabilities and capacity as those provided other cities served by the Operator in the King-Pierce-Snohomish County area of the State of Washington. The City may, at its discretion, require that the Operator provide such interactive services as addressability, security, computer interaction, banking, shopping, voice and data transmission, High Definition Television (HDTV), fiber optic and other such features, as well as upgrades capable of carrying at least fifty-four (54) channels, within the City within twenty-four (24) months of any of the following occurrences:

Provision by the Operator of any of the same services identified above to a preponderance of a cable system;

- (a) Within the City of Seattle system, or;
- (b) Within any adjacent community, or;
- (c) Forty percent (40%) of the municipalities in King, Pierce, and Snohomish Counties.

Notwithstanding the above, the Operator shall in any event complete the upgrade to 54 channels and have the capability of implementing these enhanced services within forty-eight (48) months from the effective date of this franchise.

Prior to implementation of any such services listed above the Operator may request a public hearing by the City Council, to discuss the benefits of said features to the citizens of the City.

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Upon a finding by the City Council that such features are reasonably required to meet community needs, taking into consideration the expense of providing such services and the potential costs to subscribers, the City Council may require the implementation of such features in accord with the provisions of this agreement. If the Council deem it necessary, it may, at its own option by a majority vote, extend the time requirements established in this section.

Additionally, the Operator, upon completion of the upgrade or by the expiration of the forty-eight (48) month period as prescribed herein, shall provide, maintain and operate a public access studio within a radius of eight (8) miles of the City Hall, or at a location mutually agreeable by all parties. Such facilities shall be subject to approval by the City as suitable. Such approval shall not be unreasonably withheld.

Section 6: Public, Educational, and Government Access Channels.

Within six (6) months of the effective date of this Franchise, unless such time is extended by mutual written agreement between the parties, the Operator shall make provisions so that the City shall have the capability of live broadcasting from City Hall.

The City shall initially be provided with one (1) access channel capable of live broadcast from City Hall. Upon the provision of fifty-four (54) or more channels the City shall be provided with one (1) educational access channel upon request by the City. The City may initially share a common public access channel with other communities, however, the City may elect, at its option, to provide programming over an individual public access channel for the City's sole use.

Additional channels over and above these shall be made available for City purposes when any of the two (2) designated channels is in use for access purposes with programming during fifty percent (50%) of the hours between 10:00 a.m. and 10:00 p.m., during any consecutive ten (10) week period. Programming or additional channels required shall be distinct and non-repetitive of the previous channel. The Operator shall, within six (6) months following a request by the City, provide another designated access channel for this purpose.

The Operator shall continue to provide additional channels under the same conditions. If additional channels are designated for community use, but, after one year, such channel(s) are not programmed at least twenty-five percent (25%) of the hours between 10:00 a.m. and 10:00 p.m. with programming, the access users will, within six (6) months of receiving written notice from the Operator, group their programming into one contiguous block of time of their choosing. The remaining broadcast time on such channel shall then revert to the Operator for its unrestricted use within the terms and conditions of this ordinance.

Contributions to Public, Educational and Government ("PEG") access will not be considered in lieu of a franchise fee or other obligations to the City.

Section 7: Government Access Equipment.

The Operator shall provide, maintain, and install the necessary equipment for local government cablecasting within six (6) months of a request of the City unless extended by mutual written agreement. Such equipment shall not be less in quantity nor equivalent quality than those listed in Appendix A.

Section 8: Institutional Networks.

Within twelve (12) months from the effective date of this franchise the Operator shall provide a unidirectional institutional network linking the City's fire stations as indicated in Appendix B. This system will allow programming to be originated in coded form from the East Hill fire station and to be received by decoding devices in each fire station location.

Upon completion of the upgrade under the conditions specified in "Section 5: Future Provisions," the Operator shall make available within six (6) months an interactive system to provide two-way communication between the fire stations.

Subsequent to this event other agencies may request a hearing by the City Council in order to substantiate a need for further educational or public safety bi-directional networks. The Operator shall have the opportunity to present its views on the cost and appropriateness of any such contemplated network.

section 9: Coverage.

The City shall be provided with cable television service in the entire Franchise area. If such a condition does not now exist, the Operator shall complete such wiring and be in a position to offer cable reception to all residents within twelve (12) months from the grant of the Franchise. Areas subsequently annexed shall be provided with cable availability within twelve (12) months if not already served by cable, subject to the terms in Section 7.12.270 Extraordinary Installation of Section 2 of the Kent Cable Communications Ordinance No. 3/07.

Section 10: Emergency Override.

Upon completion of the system upgrade subject to the conditions of <u>Section 5</u>; <u>Future Provisions</u> the Operator shall make provisions for an emergency alert system from City Hall or any one of the primary police or fire facilities. The Operator shall establish a process which will provide a character generated scroll and make its best effort to furnish a voice override notifying viewers and listeners of the emergency. This emergency alert system will be compatible with applicable Federal, State and Local regulations.

Subject to Federal and State laws and regional planning authorities, control of these emergency override facilities shall be the responsibility of the City. The City shall hold a franchisee, its agents, employees, officers, and assigns harmless from any claims arising out of the emergency use of its transmitting facilities by the City. The City, at its option may elect to share this service with adjoining communities.

Section 11: Public Buildings.

The Operator shall provide without charge for installation or monthly rate, basic service, and outlets at such public buildings and schools as specified in Appendix "B" and "C" as well as other such buildings that may be constructed during the period of the Franchise that are passed by cable and within 150 feet of the trunk or distribution system. The Operator shall make its best efforts to provide regional interconnection of all schools at the appropriate time.

Section 12: Penalties.

The City may, following a hearing of the City Council, apply any of the following penalties in connection with delays in system performance. The City shall, prior to any hearing which may result in the imposition of fines, provide the Operator a reasonable opportunity to correct alleged violations by notifying the Operator in writing within thirty (30) days of the City's discovery of the alleged violation, stating the nature of the alleged non-compliance.

If, following such hearing, it is determined by the City Council that the Operator has failed to comply with the schedule set forth in the Franchise, monetary penalties will be imposed as set forth below for each day beyond thirty (30) days that the Operator has not fulfilled the requirement(s):

- Upgrade improvements and regional P.E.G. facilities required
 by <u>Section 5: Future Provisions</u>, \$200.00 per day.
- b. Equipment and channels committed by the Operator to the City for access purposes described in <u>Sections 6. 7 and 8</u>, \$200.00 per day.
- c. Coverage of annexed areas where such is not completed as required by <u>Section 9</u>, \$200.00 per day.

Termination of the Franchise pursuant to the procedure outlined in the City's Cable Communications Ordinance No. 3/07 may be imposed for any violation of one or more of the above listed items. The Operator and the City agree that any of the above described violations, unless excused, would constitute failure to comply with a material provision of the Franchise.

The penalty amounts listed in this section shall be adjusted as necessary to compensate for inflation. No penalty shall be imposed without a hearing before the Council or its designated

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representative(s). No penalty, bond, forfeiture, or termination shall be imposed for delays where such delays are the result of causes beyond the control and/or without fault or negligence of the Operator, as determined by the City. The Operator shall be entitled to an extension of time if construction is suspended or delayed by the City, or where unusual weather, acts of God (e.g. earthquakes, floods, etc.), extraordinary acts of third parties, or other circumstances which are beyond the control of the Operator, delay progress provided that the Operator has not, through its own actions or inactions, substantially contributed to the delay. amount of time allowed will be determined by the City and the Operator. The extension of time in any case shall not be less than the extent of the actual non-contributory delay experienced by the Operator. If payment of any of these penalties is delinquent by three (3) months or more, the City may require partial or total forfeiture of performance bonds or other surety.

Section 13: Independent Contractor.

This agreement shall not be construed to provide that the Operator is the agent or legal representative of the City for any purpose whatsoever. The Operator is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City or to bind the City in any manner or thing whatsoever.

Section 14: Entire Agreement.

This agreement, including the City's Cable Communications Ordinance No. 3/07 and exhibits that are attached hereto and incorporated herein by reference, represents all of the covenants, promises, agreements, and conditions, both oral and written, between the parties. However, the City reserves the right to waive

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any of these sections without affecting the applicability of other sections not so specifically waived. Waiver of any Franchise requirement or Ordinance sections by the City shall be in writing in order to be effective.

Section 15: Successors or Assigns.

This Franchise Agreement, including all addenda, and the City's Cable Communications Ordinance No. 3107 shall bind the Operator, its heirs, successors, transferees and assigns.

Section 16: Acceptance.

This grant of Franchise and its terms and provisions shall be accepted by the Operator by the submission of a written instrument, executed and sworn to by a corporate officer of the Operator before a Notary Public, and filed with the City Clerk within sixty (60) days after the effective date of this Franchise. Such instrument shall evidence the unconditional acceptance of this Franchise and the promise to comply with and abide by all its provisions, terms and conditions.

Section 17: Notice.

Written notices shall be deemed to have been duly served if delivered in person to the individual or entity for whom it was intended, or if delivered at or sent by registered or certified. United States mail to the last business address known to the party who gives the notice.

All notices and requests shall be addressed to the City of Kent and the Operator as follows:

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CITY:

City Clerk

City of Kent

220 Fourth Avenue South

Kent, WA 98032

OPERATOR:

TCI Cablevision of Washington, Inc.

P.O. Box 1048 Auburn, WA 98002

section 18: Severability.

The provisions of this ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this ordinance, or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of the ordinance, or the invalidity of its application to other persons or circumstances.

Section 19: Effective Date.

This Ordinance shall take effect thirty (30) days from and after its passage and publication, provided, however, the Franchise granted by this Ordinance shall not become effective until the Operator files written acceptance thereof.

DAN KELLEHER, MAYOR

ATTEST:
Brenda Jacober CITY CLERK
APPROVED AS TO FORM:
ROGER A. LUBOVICH, CITY ATTORNEY
PASSED the 4th day of May, 1993. APPROVED the 5 day of May, 1993. PUBLISHED the 9 day of May, 1993.
I hereby certify that this is a true copy of Ordinance No. 3108, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.
Brenda Jacober (SEAL) BRENDA JACOBER, CITY CLERK

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In accordance with <u>Section 7: Government Access Equipment</u>, the following equipment or its equivalent will be supplied by the Operator:

<u>Ouantity</u>	Description of Item	
1	Texscan MSI-SG 4-B Character Generator	
3	Panasonic CCD Two-Color Chip Cameras	
3	Telco Remote Camera Control Systems	
1	Amega 3000 Computer System with Omni Link	
	and Video Toaster	
2	Panasonic AG 8350 SVHS 1/2" Recording Decks	
1	Shure Audio Microphone System	
10	Lavalier Microphones	
3	12" Color Monitors	
1	19" Color Monitor	
2	Panasonic AG460 1/2" SVHS Cameras	
2	LTM 4 Pepper 420 Light Kits (with	
	accessories)	
2	Bogen 3062 Video Tripods (w/3066 fluid head)	
2	Tripod Adaptors	
20	1/2" 20 Minute Video Cassettes	
20	1/2" 30 Minute Video Cassettes	
20	1/2" 60 Minute Video Cassettes	
	Miscellaneous lighting system as required adequately allow for the video taping and broadcast of City meetings in the existing City Council Chambers.	
	Miscellaneous cable as required to complete the wiring of the existing City Council Chambers.	

CENTENNIAL CENTER 400 W. Gowe Kent, WA 98032

CITY HALL 220 4th Ave. S. Kent, WA 98032

CITY SHOPS 5821 S. 240th Kent, WA 98032

CORRECTIONS FACILITY 1230 S. Central Kent, WA 98032

FIRE STATION #1 504 W. Crow Kent, WA 98032

FIRE STATION #3 26512 Military Rd. S. Kent, WA 98031

FIRE STATION #4 24611 116th Ave. S.E. Kent, WA 98031

KENT COMMONS 525 4th Ave. N. Kent, WA 98032 LIBRARY 212 2nd Ave. N. Kent, WA 98032

RIVERBEND DRIVING RANGE 2020 W. Meeker Kent, WA 98032

RIVERBEND 9 HOLE 2020 W. Meeker Kent, WA 98032

RIVERBEND 18 HOLE 2019 W. Meeker Kent, WA 98032

SENIOR CENTER 600 E. Smith Kent, WA 98031

SPECIAL POPULATIONS CENTER 315 E. Meeker Kent, WA 98031

VALLEY COM. 23807 98th S. Kent, WA 98031

KENT POLICE DEPARTMENT 232 4th Ave. S. Kent, WA 98032

The following buildings will be connected when economically and technically feasible:

FIRE STATION #6, 20676 72nd Ave. S., Kent, WA 98032

City of Kent Schools

Cedar Valley Elementary 26500 Timberlane Wy. SE Kent, WA 98042

Covington Elementary 17070 S.E. Wax Road Kent, WA 98042

East Hill Elementary 9825 S. 240th Kent, WA 98042

Grass Lake Elementary 28700 191st PI. S.E. Kent, WA 98042

Kent Elementary 317 4th Avenue S. Kent, WA 98032

Kent Junior High 620 N. Central Kent, WA 98032

Kent Meridian High School 10020 S.E. 256th Kent, WA 98031

Kentridge High School 12430 S.E. 208th Kent, WA 98031

Lake Youngs Elementary 19660 142nd Ave. S.E. Kent, WA 98042 Martin Sortun Elementary 12711 S.E. 248th Street Kent, WA 98031

Mattson Junior High 16400 S.E. 251 st. Kent, WA 98042

Meridian Junior High 23480 120th S.E. Kent, WA 98031

Panther Lake Elementary 20831 108th S.E. Kent, WA 98031

Park Orchard Elementary 11010 S.E. 232nd Kent, WA 98031

Pine Tree Elementary 27825 188th S.E. Kent, WA 98031

Scenic Hill Elementary 26025 Woodland Way S. Kent, WA 98031

Soos Creek Elementary 12651 S.E. 218th PI. Kent, WA 98031

Springbrook Elementary 20035 100th S.E. Kent, WA 98031

If economically and technically feasible, additional schools, when constructed or added to the Kent school system, will be provided with cable service.

If economically and technically feasible, all existing or added Federal Way School system schools located within the territorial limits of the City of Kent will be provided with cable service.

The following schools will be provided with cable service when economically and technically feasible:

Crestwood Elementary, 25225 180th S.E., Kent, WA 98042
Horizon Elementary, 27641 144th Avenue S.E., Kent, WA 98042
Jenkins Creek Elementary, 26915 186th Avenue S.E., Kent, WA 98042
Kent Continuation School, 22420 Military Road, Kent, WA 98032
Kentwood High School, 25800 164th S.E., Kent, WA 98042
Neely-0'Brien Elementary, 6300 S. 236th Street, Kent, WA 98032
Sequoia Junior High, 11000 S.E. 264th, Kent, WA 98031

Results of Random Sampling of 800 Residences 11/13/91

	% Responding	
Type of Programming	Very High or Sc	<u>mewhat High</u>
		
News		
Old Movies.		75%
Sports		75%
Weather		718
Adult Education	• • • • • • • • • • • • • • • •	678
Health	• • • • • • • • • • • • • • • •	₹
Local Bulletin Board		
Fine Arts	• • • • • • • • • • • • • • • • •	80C
Video Music	• • • • • • • • • • • • • • • •	
Children's Programs		
Business		80C
Consumer Information		
Country		
Local Advertisement	• • • • • • • • • • • • • • • • • • • •	ەەر ھەر
Senior Citizens		55
U.S. Congress Proceedings		
Religious		812
Spanish Language		